

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	Crim. No. 05-00065 HG
)	
Plaintiff,)	
)	
vs.)	
)	
SEAN SMITH,)	
)	
Defendant.)	
_____)	

**ORDER GRANTING GOVERNMENT'S MOTION FOR REDUCTION
OF SENTENCE FOR SUBSTANTIAL ASSISTANCE**

On November 28, 2005, Defendant Sean Smith ("Defendant") plead guilty to conspiracy to distribute and to possess with intent to distribute more than 500 grams of a methamphetamine mixture in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 1 of the Indictment). (Doc. 21.)

On May 18, 2006, the Government filed a Motion For § 5K1.1 Downward Departure And Sentencing Recommendation based upon pre-sentence substantial assistance to government authorities. ("Motion for Downward Departure", Doc. 29.) The Government indicated in the Motion for Downward Departure that further relief pursuant to Fed. R. Crim. Proc., Rule 35 might be a possibility if Defendant provided post-sentence assistance to the Government. (Doc. 29 at 2.)

At the sentencing hearing on June 1, 2006, the Court granted

the Government's Motion For Downward Departure. The Court sentenced Defendant to 170 months of confinement. (Doc. 34.)

On May 3, 2007, the Government filed a Protective Rule 35 Motion, ("Rule 35 Motion", Doc. 37), pursuant to Federal Rules of Criminal Procedure ("Fed. R. Crim. P."), Rule 35. The Rule 35 Motion requests a reduction of Defendant's sentence for the substantial assistance the Defendant provided the Government authorities. The Government requested a deferral of consideration of the Rule 35 Motion pending an indictment and sentencing proceedings in another case.

On September 25, 2007, the Government filed a Supplemental Rule 35 Statement pursuant to Fed. R. Crim. P., Rule 35. ("Supplemental Statement", Doc. 38.) The Supplemental Statement recommends a 24-36 month reduction of Defendant's sentence from 170 months to 134-146 months.

On October 3, 2007, Defendant filed a Motion For Joinder In Government's Supplemental Rule 35 Statement. (Doc. 39.) Defendant asked the Court to reduce his sentence to 134 months.

STANDARD OF REVIEW

Federal Rule of Criminal Procedure 35(b)(1) provides:

(1) In General. Upon the government's motion made within one year of sentencing, the court may reduce a sentence if:

(A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and

(B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements.

Federal Rule of Criminal Procedure 35(b)(2)(B) provides:

(2) Later Motion. Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

. . . .

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing;

A Rule 35 motion is essentially a plea for leniency and is addressed to the sound discretion of the district court. United States v. Smith, 964 F.2d 885, 887 (9th Cir. 1992); United States v. Hooton, 693 F.2d 857, 859 (9th Cir. 1982).

ANALYSIS

The Court finds that Defendant substantially assisted the Government in the investigation and prosecution of criminal activity. A reduction of Defendant's sentence pursuant to Rule 35(b)(1) and (b)(2)(B) is appropriate. Based on the nature of Defendant's cooperation, the Court grants a sentence reduction of 36 months, finding this to be consistent with the Sentencing Guidelines and the Sentencing Commission's policy statements.

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CONCLUSION

In accordance with the foregoing, the Court **GRANTS** the Government's motion to reduce Defendant's sentence. The Court sentences Defendant to 134 months imprisonment. All other aspects of Defendant's sentence remain unchanged.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, December 14, 2007.



/s/ Helen Gillmor

Chief United States District Judge

United States v. Sean Smith, Crim. No. 05-00065 HG; **ORDER GRANTING GOVERNMENT'S MOTION FOR REDUCTION OF SENTENCE FOR SUBSTANTIAL ASSISTANCE**